

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

ALEX WEHRSPANN,

Plaintiff,

vs.

DUBUQUE COMMUNITY SCHOOL
DISTRICT and KEYSTONE AREA
EDUCATION AGENCY,

Defendants.

No. 15-CV-1029-LRR

ORDER

I. INTRODUCTION

The matter before the court is United States Chief Magistrate Judge C.J. Williams’s Report and Recommendation (docket no. 28). The Report and Recommendation recommends that the court reverse the Administrative Law Judge’s (“ALJ”) decision that Plaintiff Alex Wehrspann was not an eligible individual within the meaning of the Individuals with Disabilities Education Act (“IDEA”), that the court remand the matter to the ALJ for a more thorough examination of the issues and that the court deny Plaintiff’s request for attorney fees and costs.

II. RELEVANT PROCEDURAL HISTORY

On September 25, 2015, Plaintiff filed a Complaint (docket no. 1) requesting that the court reverse the decision of the ALJ, remand the matter to the Iowa Department of Education and award Plaintiff reasonable attorney fees and costs. *See* Complaint at 15. On November 12, 2015, Defendants Dubuque Community School District and Keystone Area Education Agency (collectively, “Defendants”) filed an Answer (docket no. 3). On June 20, 2016, Plaintiff filed the Plaintiff’s Brief (docket no. 11). On August 2, 2016, Defendants filed the Defendants’ Brief (docket no. 13). On August 12, 2016, Plaintiff filed the Reply Brief (docket no. 14). On December 1, 2017, Plaintiff filed a

Supplemental Brief (docket no. 20). The matter was referred to Judge Williams. On July 27, 2018, Judge Williams issued the Report and Recommendation. Neither party has filed objections to the Report and Recommendation, and the time for doing so has passed. *See* LR 72(A) (“A party who objects to or seeks review or reconsideration of . . . a magistrate judge’s report and recommendation must file specific, written objections to the . . . report and recommendation within [fourteen] days after service of the . . . report and recommendation.”).

III. STANDARD OF REVIEW

Pursuant to statute, this court’s standard of review for a magistrate judge’s report and recommendation is as follows:

A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.

28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (providing that, when a party properly objects to a report and recommendation on a dispositive motion, a district court must review de novo the magistrate judge’s recommendation). The Eighth Circuit has repeatedly held that it is reversible error for a district court to fail to conduct a de novo review of a magistrate judge’s report and recommendation when such review is required. *See, e.g., United States v. Lothridge*, 324 F.3d 599, 600 (8th Cir. 2003); *Hosna v. Goose*, 80 F.3d 298, 306 (8th Cir. 1996); *Hudson v. Gammon*, 46 F.3d 785, 786 (8th Cir. 1995); *Belk v. Purkett*, 15 F.3d 803, 815 (8th Cir. 1994). The statute governing review provides only for de novo review of “those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1). The court reviews the unobjected-to portions of the proposed findings or recommendations for “plain error.” *See United States v. Rodriguez*, 484 F.3d 1006, 1010-11 (8th Cir. 2007) (noting that, where a party does not file objections to a magistrate’s


report and recommendation, the party waives the right to de novo review and the court will review the decision for plain error).

IV. CONCLUSION

In this case, no objections have been filed, and it appears to the court upon review of Judge Williams's findings and conclusions that there is no ground to reject or modify them. Therefore, the court **ACCEPTS** Judge Williams's Report and Recommendation of July 27, 2018. The Report and Recommendation (docket no. 28) is **ADOPTED** and the final decision of the ALJ is **REVERSED**. The matter is **REMANDED** for further consideration consistent with the Report and Recommendation. Further, Plaintiff's request for attorney fees and costs is **DENIED**.

IT IS SO ORDERED.

DATED this 14th day of August, 2018.



LINDA R. READE, JUDGE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA